

**REMARKS**

This is in full and timely response to the non-final Official Action of August 31, 2006. Reexamination and reconsideration are respectfully requested.

**Priority Acknowledgement**

It is noted with appreciation that the priority claim was acknowledged and that all certified copies of the priority documents have been received, presumably from the International Bureau for the International Application on which this application is based.

**Drawings Accepted**

It is also noted that the drawings as filed are accepted.

**Information Disclosure Statement**

Finally, it is also appreciated that the IDS at filing was acknowledged with its indication that the art cited in the International Search Report there submitted and the document cited in the background in the specification were considered and made of record.

**Claims Overview**

Claims 1 to 6 were presented as clarified at filing by the Article 34 Amendments, with original claims 7 to 11 canceled. Claims 5 and 6 were indicated to contain allowable subject matter, but had some dependency inadvertences. To the extent the subject matter of allowable claims 5 and 6 is resubmitted in combination with their base claim 1, this rejection is overcome.

Claims 1, 2 and 4 as submitted were initially rejected as anticipated by Andrews, U.S. Pat. No. 5,974,016. Without indicating agreement with or acquiescence in these statements of the rejection, these claims are not reasserted without amendments.

Allowable claim 5

Original claim 1 is amended to include the subject matter of allowable claim 5, and claims 2, 3, 4, and 6 (with adjusting amendments to conform to the amendment added) are retained. Thus, claims 1, 2, 3, 4 and 6 are prima facie allowable, while claim 5 is canceled in that its subject matter is included in its base claim 1.

Claims 7 to 11 remain cancelled.

Allowable claim 6

Original claim 6 was indicated to be allowable. The subject matter of claim 6 is migrated to the subject matter of original claim 1 and a new claim 12 (a combination of claims 1 and 6) is presented. In addition, claims 13, 14, 15, and 16, corresponding to the subject matter of original claims 2, 3, 4 and 5, are retained but dependent on new allowable claim 12, with adjustments to the language, such as language like that in former claim 2.

Rejected Claim 3

Claim 3 had been rejected as unpatentable over Andrews '016 as discussed in section 9 of the Action, spanning pages 3 and 4. Claim 3 is added to original claims 1 and 2, so that its subject matter is presented for reconsideration as a new claim 17, on which claim 18, 19 and 20, corresponding to claims 4, 5 and 6 are dependent. Of this new set, at least claims 19 and 20 would be allowable for at least the reasons that claims 5 and 6 were allowable because they are dependent on a narrower claim 1, as amended to become a new claim 17, with language adjustments as discussed for the subject matter of claim 2.

As to the subject matter of original claim 3, the examiner admitted that Andrews does not show a light emitter and light detector, and does not show the other limitations of original claim 3 as noted in the first full paragraph of section 9 spanning pages 3 and 4 of the Action. However, the examiner took Official Notice for the deficiency of Andrews as to the subject matter of original claim 3. This position is respectfully traversed.

MPEP §2144.03 provides guidance to examiners for use of Official Notice or reliance on “common knowledge” in view of the “substantial evidence” standard of review. As there indicated, the use of Official Notice is permissible only in some circumstances. Here, it is challenged that Official Notice is proper, when it purports to migrate a detection technique arguably taught by Andrews for disc detection, and that it appropriately covers the tray detection subject matter of claim 3 as rewritten in new claim 17. It seems that the syllogism is a two step requirement founded in hindsight in that Andrews teaches disc detection with a target, but does not teach tray detection or tray detection with a light emitter and light detector. Because a light detector and light emitter are well known, one of skill would use it in Andrews not just for the disc detection but also for the tray detection. These findings are thus traversed.

While there may be a notice of facts somewhat similar to the limitations claimed, such as in Andrews, for a different purpose, the claimed feature is not capable of Official Notice for the purpose claimed. Thus, under MPEP §2144.03 C. the Applicant respectfully demands authority for that statement as to this claim in this context of the full statement of the facts on which Official Notice is taken.

Specifically, claim 17 recites in pertinent part that:

“...on a pull-in path of the tray, tray detection means for detecting a predetermined portion of the tray; and disc detection means for detecting the disc-shaped recording medium,

wherein the tray detection means includes a target section of detection which is provided, along the pull-in direction of the tray, at a predetermined position and the disc detection means directly detects the disc-shaped recording medium, and a combination of a detection by means of the disc detection means and a detection by means of the tray detection means allows to detect whether or not the disc-shaped recording medium is properly mounted on the tray, or of a size of the disc-shaped recording medium, characterized in that the tray detection means and the disc detection means are located on a peripheral edge of an opening, for leading the tray in, at a front panel, and further characterized in that:

the tray detection means includes a light emitter and a light detector, and also includes a target section of detection including a reflective or a non-reflective portion at the tray side; and a detection operation is carried out in which the light detector detects whether or not a light emitted from the light emitter is reflected at the target section of detection.

It seems unclear from the last paragraph in section 9 on page 4 of the Action what findings are being attributed to Andrews, and what motivates their migration. Perhaps that statement is inadvertent in that it seems inconsistent with the statement of Official Notice. It seems that what the examiner is intending is to assert that Andrews' teaching of a disc position detection sensor itself suggests a tray position sensor in light of the Official Notice. Yet, nothing is cited to support what provides a motivation or impetus to use both techniques, except as found in the teachings of the Applicant in this specification. The finding, as understood and restated, is thus considered insufficient, in and of itself or in combination with the skill in the art, to teach or suggest all of the pertinent limitations of claim 3 as migrated to claim 17.

The undersigned would invite a telephone interview with the examiner to map the limitations of claim 17 against Andrews and whatever art is relied upon responsive to the Applicant's "demand" for supporting art. In the alternative, such a specific mapping is respectfully requested if this case is not held to be allowable.

Conclusion

The claims 1 to 4 and 6 and claims 12 to 20 are all considered to be allowable, while claims 1 to 4 and 6 and claims 12 to 17 are prima facie allowable as based on claims found allowable in the Action.

Dated: November 27, 2006

Customer No. 23353

Respectfully submitted,

By

Ronald P. Kananen

Registration No.: 24,104

RADER, FISHMAN & GRAUER PLLC

1233 20th Street, N.W.

Suite 501

Washington, DC 20036

(202) 955-3750

Attorney for Applicant